IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

H. CHASSANIOL, Appellant,

vs.

CITY OF GREENWOOD, Appellee.

No. 428

BRIEF FOR APPELLANT

PETITION FOR REHEARING AND FOR ENLARGEMENT OF TIME IN WHICH THE MANDATE SHALL ISSUE

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, H. Chassaniol, appellant in the above styled cause, by his attorney, hereby petitions for a rehearing by the Court and for an enlargement of the time in which the mandate shall issue, and as grounds for this petition, says:

The opinion holds that the growing, ginning, transportation to the compress, compressing, and buying of the cotton from the grower, are each but steps in preparation for the sale and shipment in interstate or foreign commerce, the buyer becoming the absolute owner of the cotton when he buys it from the grower.

In this case the buyer first sells in interstate or foreign commerce, and then buys the cotton for the purpose of shipping it on the contracts which he has entered into. The court holds, in substance, that the transaction between the buyer and the mill is interstate commerce, but that the transaction between the buyer and the grower is intrastate commerce.

The case of Shafer, Attorney General, vs. Farmers Grain Company, 268 U. S. 189, is not referred to in the opinion. In that case the elevator bought the grain from the farmers, and became the absolute owner thereof just as much as the cotton buyer became the absolute owner of the cotton in the case at bar. The elevator then shipped the grain to a terminal market without the state, there to be sold. In other words, the elevator bought the grain, which was one transaction; and then shipped it out of the state to be sold, which was another transaction.

The cotton buyer first sold the cotton out

of the state, and then bought the cotton to ship out of the state on his contract. We see no difference in principle between the Shafer case and the case at bar. Absolute ownership in the buyer exists in both cases.

Now, quoting from the Shafer case, we have the following:

> "Buying for shipment, and shipping, to markets in other states, when conducted as before shown, constitutes interstate commerce, the buying being as much a part of it as the shipping. We so held in Lemke vs. Farmers Grain Company, supra, following and applying the principle of prior cases."

We respectfully submit that the Shafer case and its predecessors should be overruled if the opinion in the case at bar is allowed to stand. But we see no way to answer the Shafer case. No grain could be shipped for sale unless it could be bought. Admittedly, the shipping for sale is interstate commerce. But the buying of the grain is an indispensable concomitant of the shipping and selling. It is not a mere preliminary step. To tax buying of grain, when the buying is for the purpose of shipping for sale, is just as effective a restraint on interstate commerce as to tax the shipping for sale.

In the case at bar, to tax the buying of cotton, when the buying is for the purpose of and essential to filling an interstate order, is just as effective a restraint on interstate commerce as to tax the selling. The cotton buyer would not sell unless he could buy. It is an indispensable concomitant of the selling, and not a mere preliminary step. This buying and selling are inseparable; they are interstate commerce itself. They are just as necessary to propel the cotton across the state line as is transportation by the railroads. Without buying and selling and transportation the cotton would never move across the state line. We have no quarrel with the recent case of Federal Compress & Warehouse Company, vs. McLean, 290 U. S._____. It is different from the case at bar.

If a buyer sold to another buyer of the Chassaniol class, who in turn sold to a mill without the state, the first transaction would be intrastate commerce and subject to the tax. But that is not the situation, except for the "overs" and these are shown to be but a necessary incident to the main transactions. Without the buyer of Chassaniol's type the cotton would never leave the state. His purchase is in fulfillment of the last transaction of sale which is followed by the shipment of the very cotton bought. In the one personage of Chassanoil we find consolidated the person who has

sold in interstate commerce, and is buying to fill his contract. If the state should lay a prohibitory and valid tax, say of $10.00 per bale, either upon his buying or his selling, he will, in either event, be forced to abandon his business. Such a tax would burden interstate commerce either way it was laid.

In closing, we further respectfully point out that the opinion reveals a misapprehension of fact with reference to the "overs." It is said in the opinion: "And some of the cotton bought as 'overs' changes ownership several times within the state." The record reveals only one resale of overs and that is to a buyer who happens to have an interstate order for such cotton, and who buys the "overs" for the purpose of shipping on that order. We suggest that this misapprehension may have been caused from an inadvertent admission of counsel at the oral argument.

We are aware of our own limitations, but respectfully submit that we are unable to differentiate the principles of the Shafer case from this case.

It is, therefore, submitted that a rehearing herein should be granted, and that a proper

enlargement of time should be ordered for the issuing of the mandate.

Respectfully submitted,

EDWARD W. SMITH,
SAM C. COOK,

Attorneys for Petitioner.

I, the undersigned Edward W. Smith, Attorney of record for petitioner (appellant) in the above styled cause, do hereby certify that the above and foregoing petition is presented in good faith and not for delay.

Attorney for Petitioner.